MD NAHAR NOORDIN v.
PENTADBIR TANAH DAERAH HULU LANGAT

HIGH COURT MALAYA, SHAH ALAM
MOHD YAZID MUSTAFA J
[LAND REFERENCE NO: 15-94-06-2016]
9 OCTOBER 2017

LAND LAW: *Acquisition of land – Land reference – District Land Administrator (DLA) – Whether appearance in person at proceedings mandatory – Whether DLA could be cross-examined – Whether appearance in order to give evidence to defend award made in respect of area of land – Whether DLA carries out quasi-judicial role – Whether a party on behalf of State Authority – Land Acquisition Act 1960, s. 12, 40A, 43 & 47 – Federal Constitution, art. 13*

The applicant's land was acquired under the Land Acquisition Act 1960 ('the LAA'). The respondent's award was delivered on 9 June 2015 but was only served on the applicant on 23 July 2015. Dissatisfied with the award, the applicant filed an objection in Form N which was subsequently referred to the High Court by the respondent pursuant to s. 38(5) of the LAA. The hearing of the land reference under s. 45 of the LAA was fixed on 17 July 2017. The applicant filed his private valuer's valuation report and the rebuttal report. The applicant also served a notice, which fulfilled all the requirements of s. 43 of the LAA, to direct the respondent's appearance in court and to cross-examine the respondent on the basis and amount of the respondent's award. On the hearing date, an objection was raised that the respondent could not be compelled to appear in court nor be cross-examined. Hence, the land reference was adjourned for the court to decide on whether a District Land Administrator ('DLA') could be compelled to appear and be cross-examined in a land reference hearing.

Held (holding appearance of DLA in person at land reference hearing is mandatory and appearance is to defend case):

(1) The parties to a land reference are principally the landowner as the applicant and the DLA as the respondent. There is an express statutory provision under s. 43 of the LAA on the requirement for the DLA to attend court at the land reference hearing. The word 'shall' in s. 43 of the LAA connotes a mandatory requirement for the DLA to be served with a notice to appear before the court at the land reference hearing whenever his award is challenged in regard to the area of the land or to the amount of compensation The word 'shall' or 'must' is *prima facie* a mandatory provision which must be complied without exception. (paras 7, 9 & 10)

(2) The express provision of the statute is not devoid of meaning. Once s. 43 of the LAA makes it mandatory for the DLA to appear at the land reference hearing, then it must be for a purpose. The subject matter of the land reference hearing is a challenge against the amount of the

respondent's award. It could not be that the DLA is required to appear only to watch the proceedings from the public gallery. Therefore, the express provision of s. 43 of the LAA requires the DLA to appear in person at the land reference hearing to give evidence to defend the award that he had made in respect of the area of land or, in this case, the amount of compensation. (paras 14, 16 & 17)

(3) The concern that the DLA could not be compelled to appear and be cross-examined because in conducting the land enquiry and making his award, the DLA was carrying out a *quasi*-judicial role, was misconceived. It was also misconceived to liken the role of a DLA under the LAA to that of the President of an Industrial Court. The express wording of s. 24(2) of the Industrial Relations Act 1967 specifically prohibits the President from being made a witness or a party. There is no such similar express provision under the LAA. On the contrary, the whole scheme of the LAA necessarily requires the DLA to be a party on behalf of the State Authority who acquires the private land, as clearly borne out by s. 43(d) of the LAA. (paras 18, 20 & 21)

(4) The scheme of the LAA requiring the DLA to be cross-examined was to enable the peculiar facts and circumstances of this case, the credibility or otherwise of the JPPH's report, the appropriateness of the DLA's award and what was a fair, reasonable and adequate compensation to be paid to the applicant to be ascertained by this court assisted by the assessors as prescribed by ss. 12, 40A and 47 of the LAA, consistent with the intent and spirit of art. 13 of the Federal Constitution. (para 24)

Case(s) referred to:

Azman Jufri v. Medtronic Australasia Pty Ltd & Another Appeal [2015] 5 CLJ 1026 CA ***(refd)***

B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS PC ***(refd)***

Coutts v. Commonwealth (1985) 59 ALR 699 ***(refd)***

Dato' Seri Anwar Ibrahim v. PP [2010] 4 CLJ 265 FC ***(refd)***

Ee Chong Pang & Ors v. The Land Administrator of the District of Alor Gajah & Anor [2013] 3 CLJ 649 CA ***(refd)***

Hari Bhadur Ghale v. PP [2012] 7 CLJ 789 FC ***(refd)***

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***

Mohd Saperi Mohd Nasir lwn. Pentadbir Tanah Daerah, Alor Gajah [1998] 1 CLJ Supp 287 HC ***(not foll)***

Navaradnam v. Suppian Chettiar [1973] 1 LNS 98 FC ***(refd)***

Ng Kim Moi & Ors v. Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus [2004] 3 CLJ 131 CA ***(refd)***

Oliver Young v. Collector of Land Revenue, Batu Pahat [1971] 1 LNS 94 HC ***(refd)***

Ramasamy Amaippan v. Kwan Lee Pin; Majlis Peguam Malaysia (Intervener) [2017] 1 LNS 718 CA ***(refd)***

Setia Usaha Tetap Kementerian Pelajaran v. Collector Of Land Revenue, Butterworth [1972] 1 LNS 131 HC ***(not foll)***

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals [2011] 1 CLJ 95 CA ***(refd)***
Tong Tiong Kim v. Pentadbir Tanah Daerah Johor Bahru & Anor [1994] 4 CLJ 916 HC ***(refd)***

Legislation referred to:
Federal Constitution, art. 13
Industrial Relations Act 1967, s. 24(2)
Land Acquisition Act 1960, ss. 12, 38(5), 40A, 43(d), 45, 47

Land Acquisition Act of 1894 [Ind], s. 20(c)

Other source(s) referred to:
K Shanmukham, *Sanjiva Row's Law of Land Acquisition and Compensation*, 8th edn, pp 544 & 545

For the applicant - Rosli Dahlan & Ho Ai Ting; M/s Lee Hishammuddin Allen & Gledhill
For the respondent - Muhd Abd Hakim; FC

Reported by S Barathi

JUDGMENT

Mohd Yazid Mustafa J:

The Facts

[1] The applicant's land was acquired under the Land Acquisition Act 1960. The declaration to acquire the applicant's land was made in Form D dated 7 November 2013. The enquiry only commenced some two years later on 23 April 2015. The respondent delivered his award in Form H dated 9 June 2015 but only served it on the applicant on 23 July 2015.

[2] The applicant was dissatisfied with the respondent's award and filed his objection in Form N on 3 September 2015. The respondent referred the objection to the High Court pursuant to s. 38(5) of the Land Acquisition Act 1960. The respondent filed the reference bundle under ikatan borang O dated 13 June 2016 but did not serve it on the applicant.

[3] The hearing of the land reference under s. 45 of the Land Acquisition Act 1960 was fixed on 17 July 2017. The applicant had filed his private valuer's valuation report and the rebuttal report. The applicant also served a notice to direct the respondent's appearance in court and to cross-examine the respondent on the basis and amount of the respondent's award in Form H.

[4] The notice issued by the applicant to the respondent fulfilled all the requirements of s. 43 of the Land Acquisition Act 1960 in that it gave sufficient notice to the respondent - date on which the court will proceed to hear and determine the objection; the details of the land and the direction to appear before the court at such hearing. For all purpose and intent, the objective of the mandatory requirement of s. 43 of the Land Acquisition Act 1960 has been fulfilled by the applicant's notice.

[5] On the hearing date, the respondent was present. In the presence of the two assessors, the Government assessor Mohd Rofi bin Yusof and the private assessor Mohd Azuan bin Abu Mansol, the State Legal Officer/Federal Counsel Mohd Abdul Hakim bin Mohd Ali, raised an objection that the respondent cannot be compelled to appear in court nor to be cross-examined. Due to this objection, I adjourned the land reference and directed both sides to address me on whether a PTD can be compelled to appear and be cross-examined in a land reference hearing.

[6] Both sides filed their written submissions on the aforesaid issues. I heard counsel from both sides on 12 September 2017 and fixed this matter for decision on 26 September 2017. I thank the applicant's counsel, Mr Rosli Dahlan and Ms Ho Ai Ting for a very detailed submission that has assisted me in coming to the ruling that I am making herein. These are the grounds of my decision.

Appearance And Cross-examination Of PTD

[7] The parties to a land reference are principally the landowner as applicant and the Pentadbir Tanah Daerah (PTD) as respondent.

[8] In my two years of conducting land reference cases in Shah Alam, I have observed that the PTD has never been cross-examined on his award. This has resulted in an impression that the PTD cannot be cross-examined, and hence the objection by the Federal Counsel when faced with this request by the applicant's counsel.

[9] It is often forgotten that there is an express statutory provision on the requirement for the PTD to attend court at the land reference hearing. This is specifically set out in s. 43 of the Land Acquisition Act 1960 which states:

> On receiving a reference from the Land Administrator pursuant to section 38(5), the Court shall cause a notice in Form P, specifying the day on which the Court will proceed to hear and determine the objection contained in such reference, to be served on the following persons, and directing their appearance before the Court at that hearing:
>
> (a) the applicant;
>
> (b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to section 3;
>
> (c) all persons interested in the objection, except such, if any, as having consented without protest to receive payment of the compensation awarded; and
>
> (d) **if the objection is in regard** to the area of the land or **to the amount of the compensation, the Land Administrator**. (emphasis added)

[10] The word "shall" in s. 43 of the Land Acquisition Act 1960 connotes a mandatory requirement for the PTD to be served with a notice to appear before the court at the land reference hearing whenever his award is challenged in regard to the area of the land or to the amount of compensation

(see *Coutts v. Commonwealth* (1985) 59 ALR 699 at p. 713; *AAzman Jufri v. Medtronic Australasia Pty Ltd & Another Appeal* [2015] 5 CLJ 1026; [2015] 6 MLJ 841 at p. 855; *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861; [2016] 1 MLJ 544 at pp. 579 and 580) which established the principle that the word 'shall' or 'must' is *prima facie* a mandatory provision which must be complied with without exception.

[11] It is to be noted that s. 43(d) of the Land Acquisition Act 1960 is in *pari materia* with s. 20(c) of the Indian Land Acquisition Act of 1894 which states:

> The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:
>
> (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

[12] As the Malaysian Land Acquisition Act 1960 is based on the then Indian Land Acquisition Act of 1894, assistance can also be found in the Indian cases. In *Bishnu Prosad v. Binoy Krishna* AIR (32) 1945 Calcutta 142, the High Court of Calcutta at p. 143 held:

> The proceeding in Court below was misconceived and defective from the beginning. The Collector ought to have been given notice under s. 20 of the Act and the case should have been tried as a valuation case.

[13] *Prima facie*, s. 43(d) of the Land Acquisition Act 1960 makes it mandatory for the PTD to be required to attend a land reference hearing whenever the PTD's award is being challenged. There is good reason for that statutory provision.

[14] The subject matter of the land reference hearing is a challenge against the amount of the respondent's award. Therefore, the respondent must be heard at the hearing to defend his award consistent with the principle of *audi alteram partem*. In the Privy Council case of *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14, Lord Denning at p. 4 succinctly described that natural justice entails:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

[15] The manner in which the respondent defends his position is by the process of examination and cross-examination. This fundamental principle has time and again been reaffirmed including recently by the Court of Appeal in *Ramasamy Amaippan v. Kwan Lee Pin; Majlis Peguam Malaysia (Intervener)*

A [2017] 1 LNS 718 at pp. 6 and 7:

> [12] No one could have described it any better. A denial of cross examination is a material non-compliance amounting to a breach of natural justice. In the celebrated case of *Council of Civil Service Unions v. Minister for the Civil Service* [1983] UKHL 6 ("the *CCSU* case") a
B non-compliance of natural justice qualifies as a ground to quash the impugned decision on the ground of procedural impropriety, which Lord Diplock had explained as a decision that was made in defiance of set procedures prescribed by a statute or where the 'rules of natural justice' have not been adhered to by the decision-maker. The twin pillars upon which the rules of natural justice are hoisted consist of the rule against
C bias or *Nemo Judex in causa sua*, which basically means that a man ought not to be a judge in his own cause, and secondly, the *audi alteram partem* rule, which encapsulates the right of the other side to be heard. In an article entitled "*The Rule against Bias*" by Mathew Groves (2009) UMonashLRS 10 it was observed that while the hearing rule, being the right to be heard, governs the procedural features of decision making, the
D bias rule governs the attitude or the state of mind of the decision maker. We found that observation to be an apt one. It captures in gist, what the rules of natural justice entail in practical terms, in the context of judicial and *quasi*-judicial proceedings. An astute adherence to this important concept will invariably result in impartiality, a much sought-after commodity in all forms of tribunals which decide on the rights and
E liabilities of litigating parties.

[16] Once s. 43 of the Land Acquisition Act 1960 makes it mandatory for the PTD to appear at the land reference hearing, then it must be for a purpose. It cannot be that the PTD is required to appear only to watch the
F proceedings from the public gallery. *Sanjiva Row's Law of Land Acquisition and Compensation*, 8th edn by Justice K Shanmukham at pp. 544 and 545 explains that the word "appearance" in s. 20(c) of the Indian Land Acquisition Act of 1894 means as follows:

> Section 20(c) requires a notice to be served on the Collector when the
G dispute relates to the area of the land acquired or to the amount of compensation ...
>
> The section is silent as to what a notice under cll. (b) and (c) of the section would contain. Presumably, the notice contemplated is a substitute for a summons on a defendant under the Civil Procedure Code 'to appear and answer the claim' made by the applicant. Consequently, the High Court
H of Calcutta has held that on receipt of notice under cl. (c), the Collector must enter appearances and should defend the case exactly as he would defend a government suit. It is the duty of the Collector to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation. The Collector must remember that the court will
I decide on the evidence before it about the amount of compensation that should be given, and he must, therefore, be prepared with reliable evidence at the trial. In a proceeding for ascertainment of compensation, on a reference under s. 18, the claimant is to be regarded as the plaintiff and the government as the defendant. No proceeding can properly go on

in the absence of the representative of the government.

In valuation references under cl (c), the answer on the part of the Collector is already contained in his reference to the court and all that is left for the government is to appear and defend the award …

Since, as has been already stated, a notice under this section is a substitute for summons under the Code of Civil Procedure, it follows that if a person interested fails to appear on being served with notice under this section, the consequences following upon such failure to appear will be the same as those for non-appearance of a plaintiff or of a defendant on service of summons under the provisions of the Code of Civil Procedure.

(See also *Commentary on The Land Acquisition Act* by Om Prakash Aggarwala and V.G. Ramachandran's *The Law of Land Acquisition and Compensation*, 8th Edition by Justice G.C. Mathur.)

[17] Therefore, I am of the view that the express provision of s. 43 of the Land Acquisition Act 1960 requires the PTD to appear in person at the land reference hearing to give evidence to defend the award that he had made in respect of the area of land or, in this case the amount of compensation. The express provision of the statute is not devoid of meaning. It must be given its full and plain effect (*Navaradnam v. Suppian Chettiar* [1973] 1 LNS 98; [1973] 1 MLJ 173 at p. 176, FC; *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265; [2010] 2 MLJ 312 at pp. 325 and 326, FC; *Hari Bhadur Ghale v. PP* [2012] 7 CLJ 789 at p. 795, FC).

[18] I should also address the concern that the PTD cannot be compelled to appear and be cross-examined because in conducting the land enquiry and making his award, the PTD was carrying out a *quasi*-judicial role.

[19] In my view and for reasons that I will explain, that contention is misconceived. There are numerous instances where the PTD has been called to be cross-examined in land matters in their exercise of *quasi*-judicial functions (see *Tong Tiong Kim v. Pentadbir Tanah Daerah Johor Bahru & Anor* [1994] 4 CLJ 916 at pp. 918 and 919; *Oliver Young v. Collector of Land Revenue, Batu Pahat* [1971] 1 LNS 94; [1972] 2 MLJ 208 at p. 209).

[20] It is also misconceived to liken the role of a PTD under the Land Acquisition Act 1960 to that of the President of an Industrial Court because of the express wording of s. 24(2) of the Industrial Relations Act 1967 which specifically prohibits the President from being made a witness or a party, as submitted by the Federal Counsel, as follows:

(2) Notwithstanding anything to the contrary in any written law, no member of the Court shall be compelled by any court to appear as a witness or party in any proceedings before that Court in relation to any act, matter or thing performed by him as a member of the Court under this Act.

[21] There is no such similar express provision under the Land Acquisition Act 1960. On the contrary, the whole scheme of the Land Acquisition Act

A 1960 necessarily requires the PTD to be a party on behalf of the State Authority who acquires the private land. This is clearly borne out by s. 43(d) of the Land Acquisition Act 1960 which compels and makes the appearance of the PTD a mandatory requirement at the land reference hearing.

B **[22]** It has often been said that the Land Acquisition Act 1960 is a draconian legislation with specific safeguards built in to it where the special provisions of the Land Acquisition Act 1960 must be strictly adhered to by the relevant public authorities and made applicable to all relevant parties. Strict compliance with the prescribed procedures under the Land Acquisition Act 1960 is mandatory and cannot be dispensed with willy-nilly
C (see *Ee Chong Pang & Ors v. The Land Administrator of the District of Alor Gajah & Anor* [2013] 3 CLJ 649 at pp. 656 and 657, CA; *Ng Kim Moi & Ors v. Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus* [2004] 3 CLJ 131 at p. 144, CA; *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals* [2011] 1 CLJ 95 at p.
D 100, CA)

[23] I have considered the two cases cited by the Federal Counsel (*Setia Usaha Tetap Kementerian Pelajaran v. Collector Of Land Revenue, Butterworth* [1972] 1 LNS 131; [1972] 2 MLJ 155 and *Mohd Saperi Mohd Nasir lwn. Pentadbir Tanah Daerah, Alor Gajah* [1998] 1 CLJ Supp 287) and
E I am of the view that they do not apply to the present case.

[24] The scheme of the Land Acquisition Act 1960 requiring the PTD to be cross-examined is to enable the peculiar facts and circumstances of this case, the credibility or otherwise of the JPPH's report, the appropriateness of the PTD's award and what is a fair, reasonable and adequate compensation
F to be paid to the applicant to be ascertained by this court assisted by the learned assessors as prescribed by ss. 12, 40A and 47 of the Land Acquisition Act 1960 consistent with the intent and spirit of art. 13 of the Federal Constitution.

G **[25]** Therefore, I hold as follows:

(a) Section 43 of the Land Acquisition Act 1960 mandatorily requires the PTD to appear in person at a land reference hearing;

(b) The PTD's appearance is to defend the case exactly as he would defend a Government suit as he is a party to the suit;

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(c) In making his appearance, it is the duty of the PTD to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation;

(d) Therefore, it is mandatory for the PTD to appear and be prepared with
I reliable evidence at the land reference hearing to answer the claim made by the landowner/applicant by way of cross-examination.